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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of January, 2000

Served: January 19, 2000

Applications of

HEAVYLIFT-VOLGADNEPR LTD.

for exemptions under 49 U.S.C. section 40109(g)

Dockets **OST-98-4705-4** **OST-98-4867-3**
OST-98-4719-3 **OST-98-4937-3**
OST-98-4741-2 **OST-99-5000-3**
OST-98-4794-3 **OST-99-5034-3**

ORDER CONFIRMING EXEMPTIONS

Summary

This order confirms our oral actions granting HeavyLift-VolgaDnepr Ltd. exemption authority to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized aircraft components on behalf of Boeing Commercial Airplane Group (Boeing).

Applications

By applications filed during the period November 4, 1998 – January 22, 1999, as shown in the attached Notices of Action Taken, HeavyLift-VolgaDnepr requested exemption authority pursuant to 49 U.S.C. section 40109(g) to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized aircraft parts on behalf of Boeing. The applicant stated that shipment of the parts had been delayed because of severe material shortages, and that heavy rainfall and flooding in south central Kansas prevented shipment of the parts by rail as originally scheduled. It stated that delivery by air was imperative in order to prevent further delays in production and delivery schedules and undue hardship to Boeing, and that because of the size of the cargo, transportation on U.S.-carrier aircraft was not possible. It also attached statements from Boeing confirming its characterization of the situations and supporting its requests.

Answers

Heavylift-VolgaDnepr served its applications on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

Statutory Standards

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).¹

Disposition

As shown in the attached Notices of Action Taken, we orally granted the requests of Heavylift-VolgaDnepr for exemption authority to conduct its proposed emergency cabotage flights. We confirm our actions here. We found that each application met all of the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that grant of this authority was required in the public interest.²

We were persuaded that the unforeseen material shortages and production delays, the flooding which prevented rail transportation, the need to move the cargo promptly to support production and aircraft delivery deadlines, and the fact that the cargo could not be transported by surface to meet these deadlines, constituted an emergency created by unusual circumstances not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's requests would prevent unreasonable hardship to Boeing.

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions did not constitute major regulatory actions under the Energy Policy and Conservation Act of 1975.

¹ For examples of earlier grants of authority of this type, *see* Orders 99-7-13 and 98-4-4.

² We further found the applicant qualified to perform the operations at issue here (*see, e.g.*, Order 93-10-19).

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken which granted Heavylift-VolgaDnepr Ltd. exemption authority pursuant to 49 U.S.C. section 40109(g) to perform the operations described in those Notices;
2. In the conduct of the authorized operations, we required Heavylift-VolgaDnepr to comply with the conditions of Attachment A and FAA-approved flight routings; and
3. We will serve this order on Heavylift-VolgaDnepr Ltd., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-4705

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: November 4, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way emergency cabotage cargo charter flight between Wichita, KN, and Boeing Field, Seattle, WA, on or about November 5, 1998, using its AN-124 aircraft, to transport outsized aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that because of heavy rainfall and flooding in south central Kansas shipment of the parts, which was already delayed because of supplier material shortages, could not go by rail as originally scheduled, and that in order to assure that Boeing can meet aircraft delivery commitments transport of the parts by air is required.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: November 4, 1998

Effective dates of authority granted: November 5-8,, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-4719

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: November 9, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way emergency cabotage cargo charter flight between Wichita, KN, and Boeing Field, Seattle, WA, on or about November 10, 1998, using its AN-124 aircraft, to transport outsized aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that because of heavy rainfall and flooding in south central Kansas shipment of the parts, which was already delayed because of supplier material shortages, could not go by rail as originally scheduled, and that in order to assure that Boeing can meet aircraft delivery commitments transport of the parts by air is required.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: November 9, 1998

Effective dates of authority granted: November 10-13, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

DOCKET OST-98-4741

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: November 12, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate two one-way emergency cabotage cargo charter flights between Wichita, KN, and Boeing Field, Seattle, WA, on or about November 14 & 19, 1998, using its AN-124 aircraft, to transport outsized aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that because of heavy rainfall and flooding in south central Kansas shipment of the parts, which was already delayed because of supplier material shortages, could not go by rail as originally scheduled, and that in order to assure that Boeing can meet aircraft delivery commitments transport of the parts by air is required.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: November 13, 1998

Effective dates of authority granted: November 14–22, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flights.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

DOCKET OST-98-4794

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: November 20, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate four one-way emergency cabotage cargo charter flights between Wichita, KN, and Boeing Field, Seattle, WA, during the period November 24-December 15, 1998, using its AN-124 aircraft, to transport outsized B737 aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that severe material shortages critical to the production of these parts have caused Boeing Wichita to run behind schedule, resulting in delivery delays to final production lines at Boeing's Washington facility, and that air shipment was essential to keep production lines from shutting down and to meet aircraft delivery commitments.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: November 23, 1998

Effective dates of authority granted: November 24-December 15, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-4867

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: December 8, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate two one-way emergency cabotage cargo charter flights between Wichita, KN, and Boeing Field, Seattle, WA, during the period December 14-23, 1998, using its AN-124 aircraft, to transport outsized B737 aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that severe material shortages critical to the production of these parts have caused Boeing Wichita to run behind schedule, resulting in delivery delays to final production lines at Boeing's Washington facility, and that air shipment was essential to keep production lines from shutting down and to meet aircraft delivery commitments.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: December 11, 1998

Effective dates of authority granted: December 14-23, 1998

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-98-4937

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: December 29, 1998

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way emergency cabotage cargo charter flight between Wichita, KN, and Boeing Field, Seattle, WA, on or about January 6, 1999, using its AN-124 aircraft, to transport outsized B737 aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that severe material shortages critical to the production of these parts have caused Boeing Wichita to run behind schedule, resulting in delivery delays to final production lines at Boeing's Washington facility, and that air shipment was essential to keep production lines from shutting down and to meet aircraft delivery commitments.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: January 4, 1999

Effective dates of authority granted: January 4-12, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-99-5000

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: January 13, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate two one-way emergency cabotage cargo charter flights between Wichita, KN, and Boeing Field, Seattle, WA, on or about January 14 and 19, 1999, using its AN-124 aircraft, to transport outsized B737 aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that severe material shortages critical to the production of these parts have caused Boeing Wichita to run behind schedule, resulting in delivery delays to final production lines at Boeing's Washington facility, and that air shipment was essential to keep production lines from shutting down and to meet aircraft delivery commitments.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: January 13, 1999

Effective dates of authority granted: January 14-22, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

DOCKET OST-99-5034

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Heavylift-VolgaDnepr Ltd.

Date Filed: January 22, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way emergency cabotage cargo charter flight between Wichita, KN, and Boeing Field, Seattle, WA, on or about January 26, 1999, using its AN-124 aircraft, to transport oversized B737 aircraft parts on behalf of Boeing Commercial Airplane Group. The applicant stated that severe material shortages critical to the production of these parts have caused Boeing Wichita to run behind schedule, resulting in delivery delays to final production lines at Boeing's Washington facility, and that air shipment was essential to keep production lines from shutting down and to meet aircraft delivery commitments.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: Heavylift-VolgaDnepr served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift-VolgaDnepr.

DISPOSITION

Action: Approved

Action date: January 26, 1999

Effective dates of authority granted: January 26-30, 1999

Basis for approval: We found that the application met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions and to the condition that Heavylift-VolgaDnepr comply with an FAA-approved flight routing for the authorized flight

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs